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Charity Organization Soc. of the City of New York

Justice for the poor

[New York]

[1915]

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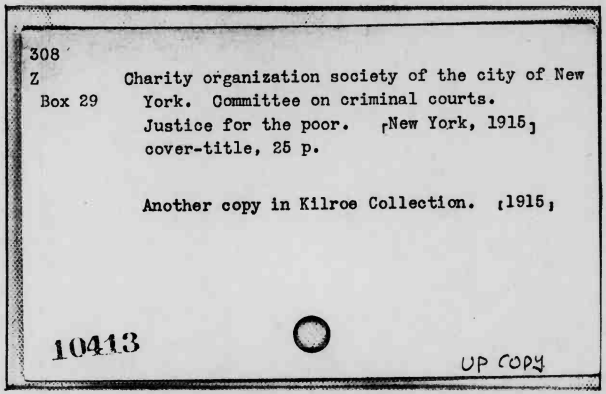
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Gift.
Hon. Clark.
May, 1915.

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Justice for the Poor

INTRODUCTION.

The reorganization of the inferior criminal courts brought about by the Page Commission in 1910 has produced great improvement in the city magistrates' courts. The work of the magistrates is now done remarkably well and with promptness and efficiency. Since 1910 a committee on criminal courts, organized under the auspices of the Charity Organization Society, has been active in assisting in the practical achievement of these reforms. Through its members and executive staff it has made constant study of the needs of the courts and has worked in complete harmony with the city magistrates and the judges of the children's court.

As a result of its observation this committee has learned that certain evils have resulted from the establishment in 1895 of a separate court of special sessions which, on the one hand, have been much more serious than could have been anticipated or than is now generally realized, and, on the other, are not necessary accompaniments of the fundamental purpose which led to such separation.

The present system is productive of much unnecessary inconvenience to citizens and public officials and of hardship to the poor man accused of petty crime. These evils have been due almost entirely to the inflexibility of the system and can in large measure be eradicated without losing any of the good. To help eliminate them the committee has drafted legislation, details of which have been worked out in co-operation with the boards of magistrates and much discussed with all parties interested in the procedure of the courts involved. The object of this pamphlet is to make clear the evils which exist and the efficiency, safety and simplicity of the remedy proposed.

14 Feb. 1916 MP

I.

THE EVILS IN THE PRESENT SYSTEM.

1.—The punishment inflicted upon the poor man because of his poverty.

UNDER our present system the poor and friendless man accused of petty crime is heavily penalized in comparison with the man who has means sufficient to get bail.

On the average, every day when it is in session the court of special sessions, in Manhattan and Brooklyn alone, acquits or lets go without trial, because it has no proof of his guilt, some poor fellow who has been unable to get bail and has been locked up on a misdemeanor charge and deprived of his liberty for over a week. Then there is, in addition, the ordinary run—nearly two cases a day on the average—who walk out, acquitted or set free for failure of proof, each of whom has done time for from three days to a week for the sin of being poor!

Every year, on the average, nearly 800 men are thus compelled to stay in prison, unnecessarily, for from three days to twenty-one days, all because of their poverty; for, even if it be assumed that they have in some way offended, their punishment has been one which they would entirely have escaped had they been able to raise money for bail. In the meantime their families, their wives and little children, perhaps, have suffered their punishment too.

What are we to think of a system of "justice" under which such things as this can happen?

On February 10, 1915, an Italian 55 years old, was arrested, and haled to the Fifth District Magistrates' Court, charged with having neglected to separate the garbage from ashes in the tenement house of which he was the janitor. The Italian was poor and could get no bail. As the offense was a misdemeanor the magistrate was compelled under the present system to hold him

for action by the Court of Special Sessions. **After staying in prison for five days waiting trial he was arraigned in that court, admitted his guilt, sentence was suspended and the man set free.** (Docket No. 38222.)

Now what was happening while the man was in jail? His wife and three little children were starving. His push cart on which he depended for his livelihood was broken, and when he emerged from jail, without money, he could not get it fixed or resume his usual vocation. The family when visited on February 18, had a half loaf of bread and nothing more.

The existence and extent of this evil is little appreciated. To the judges of special sessions and attorneys who constantly practice before them the sight of the poor man acquitted of guilt, after he has spent days of suspense and agony in jail before getting his trial, has become so familiar that it has ceased to be shocking. It is a mere "necessary incident" to the administration of justice. To the observer whose experience is only occasional, the frequency of such cases is not apparent. The reports issued by the clerk of the court give to the public no information whatever as to the relative number of prison and bail cases or the length of time required for trial in either. Only by causing its staff to make an exhaustive independent investigation of the original records of individual cases and of the docket books of the court of special sessions and the magistrates' courts has this committee become able to present the facts.

Complete details for the months of January, February and March, 1914,* show the following:

During the first quarter of 1914 some 1,100 persons accused of misdemeanors were committed to prison by city magistrates in Manhattan and Brooklyn to await trial by the court of special sessions. Of these 1,100 cases, when they finally reached the court of special sessions, 195 (or 18%) resulted in acquittals or the discharge of the prisoner or the dismissal of the case against him without trial; 526 (about 48%) pleaded guilty and 379 (about 34%) were convicted on trial.

*These months were selected as presumably typical of the year's work, instead of going over the books for the entire year, because of the expense of time and money involved in so complete an inquiry.

The following table shows the number of days spent in jail before trial by these 195 prisoners who were acquitted when held or were turned out without trial:

Days in Jail	Total No. Cases	Of which were Acquitted	Of which were Dismissed
3 days	51	42	9
4 "	6	4	2
5 "	16	8	8
6 "	32	12	20
7 "	21	8	13
8-14 "	60	36	24
15-21 "	9	7	2

Of the prisoners who were found guilty either through plea or conviction it appears that in some 353 cases (39%) the circumstances were not such that the court felt it necessary to commit the offender to a penal institution or reformatory. In some of these cases the fact that the defendant had spent some days in jail may have been taken into account by the court in suspending sentence. In most cases of this character, however, the man who secures bail in the magistrates' court is let go without having spent a day in jail; the man who cannot get bail has had to spend, on the average, about six days in jail before being released.

Applying the figures to a whole year, it is estimated that in the two larger boroughs of the city the average stay in jail awaiting trial of over 800 men who are acquitted or let go without trial has been over six days. About 1,400 petty offenders who are eventually set free on suspended sentence or fine after investigation of their cases have likewise spent an average of seven days in jail awaiting trial if they pleaded not guilty, or five days, if they have admitted their guilt from the outset. The aggregate is over 13,500 "jail days"—with a corresponding effect in crowding of the Tombs and similar prisons, to say nothing of the cost to the city.

This confinement of so many men for such long periods, be it repeated, is not inflicted upon them because of any fact connected with the alleged violation of the law, but just be-

cause they are too poor to get bail. It is escaped by the men who have money or friends. It is not imposed upon the prisoners because they are guilty. It is what they get for being poor.

It is, unfortunately, no doubt true that no human system of administering justice can be devised which will not bear more severely upon the poor man than upon the rich; but it is not necessary to make the burden so utterly disproportionate as it is in our city. The conditions as they exist are such as to make necessary the utmost efforts to improve them. An effective remedy is at hand. The real difficulty is not so much in finding the way towards better things as in overcoming the inertia which any proposed change or improvement in our criminal system has to meet.

2.—The red tape, delays and inefficiency, and the annoyance to officials and citizens involved in the present method of trying offenders for violation of corporate ordinances and of regulations of state and city departments.

In the year 1913 there were considered, in the magistrates' courts in the Boroughs of Manhattan and The Bronx, about 23,600 cases of violation of the sanitary law and over 22,000 cases of violation of corporate ordinances. In most of the sanitary law cases the prosecution was brought by officers of the Department of Health. For many of the violations of corporate ordinances the complaints were made by officers of departments of The City of New York. These cases were scattered through some six different police courts. In nearly every case the officer and citizen involved had to sit around the magistrates' court, sometimes most of the day, waiting while more important and pressing cases were disposed of.

In the court of special sessions there were handled during the year 1914 approximately 6,000 cases where the prosecution was brought by some department of the city or the state, such offenses for instance as mixing garbage and ashes, smoking in a factory, etc. (e. g., violations of sanitary code, labor law, tenement house

act, etc.). While all these cases are technically misdemeanors, they are in most instances trivial offenses, and over two-thirds of those accused plead guilty.

The committee has been in touch with the heads of the departments and bureaus interested in prosecutions of this character, and finds them unanimous in believing that all of these cases, both those disposed of by the magistrates and those sent to special sessions, could be handled much better by one court established especially for that purpose, holding sessions in the various boroughs and having such branches as may be found convenient. The present system takes up so much time and energy of public officials in running around from one court to another and waiting in court that it discourages and hampers the departments in the enforcement of the law. The citizen accused of an offense involving no moral turpitude is put to undue annoyance and inconvenience through delay in reaching his case and being haled to a court room frequently very remote from where the office of his attorney is located. Moreover, it is unnecessarily humiliating to a respectable citizen summoned to court because of some more or less technical violation of a regulative statute like the factory law, or the tenement house law, to be herded in with drunks and vagrants, and treated as a criminal. From the point of view of the public authorities nothing is gained by such treatment of property owners, perhaps much is lost in dimming of civic spirit. The questions of law involved require special knowledge, although the offenses are petty, and the magistrates find it difficult to devote sufficient time to a study of the ordinances and regulations to interpret them satisfactorily. The result often is that the court is unconsciously led because of the intricacies of these technical statutes, to rely to too great an extent upon the knowledge and information of the prosecuting officials rather than to consider judicially the merits of the issue before it. Thus property owners do not always secure that impartial consideration of their cause to which they are entitled.

For such of the violations as are technically misdemeanors there must first be a hearing by the magistrate and then another in the court of special sessions: a required duplication of procedure which is wasteful and entirely unnecessary, as every one admits. In special sessions these cases are only a hindrance to more important business.

3.—The annoyance to witnesses and the obstruction of justice through delay.

Under the present system, if a citizen has a bottle of milk or a loaf of bread stolen from him and the offender is arrested the citizen must go as a witness first to the magistrates' court, and then again, on one or more subsequent days, to the court of special sessions. Then, perchance, after he has wasted many valuable hours waiting for his case to be reached while other business is attended to, he sees the offender let off with a small fine or put on suspended sentence. This is merely an illustration, but it exemplifies what happens in hundreds of cases each year. Not infrequently the witness is brought to court time after time, only to have the hearing adjourned. Some of this is a necessary evil. It is, however, an evil, and every effort should be made to so simplify and expedite the judicial procedure as to reduce it to a minimum.

Clogging the calendars of special sessions with innumerable petty cases, which should have been disposed of on the first hearing by the committing magistrate, has made it easier for really guilty offenders, out on bail, to secure long delays in the trial of their cases. **Every delay tends to benefit a guilty defendant. It affords opportunities for tampering with witnesses or for their disappearance and for evidence to cool.**

Witness the case of Alfonso Barberio, arraigned in the 2nd District Magistrates' Court on the 12th of January, 1914, for knocking down another man (assault). He pleaded not guilty. Under the present system, the magistrate cannot dispose of such a case, he therefore held the prisoner for trial in the Court of Special Sessions. The prisoner was admitted to bail and a week later his case came up in Special Sessions. On January 19 the case was adjourned to February 4. On that day it was again adjourned to March 6th, on March 6th it was adjourned to March 27th; when it came up then it was adjourned to May 21st; on that day it was adjourned to June 18th; and finally adjourned again to July 13. One half year after the offense was committed, this simple case of assault was settled by discharging the prisoner on his own recognizance, "the witness for the people failing to appear." (Docket No. 27764.)

Many turnouts in disorderly house and gambling cases are due largely to such delays.

The committee has other instances where delay after delay and adjournment after adjournment has been had with unfortunate results from the point of view of justice. The emphasis, however, is not so much on the extreme case in which special circumstances may exist, as on the fact that the present system and congestion of calendars makes necessary an average of delay which is altogether too great.

In more than one-half of the bail cases it takes from five weeks to six months from the time the magistrate holds the defendant for the case to be disposed of. The following table, which applies only to cases where the defendant pleads not guilty, shows the record for the boroughs of Manhattan and Brooklyn for January, 1914:

Days of Delay	No.	%
8-14 "	7	2.0
15-21 "	20	5.4
22-28 "	49	13.2
29-35 "	78	21.0
36-42 "	61	16.4
43-49 "	24	6.4
50-56 "	27	7.2
57-63 "	33	9.0
64-70 "	27	7.2
71-77 "	2	.5
78-84 "	3	.8
3 mos.	23	6.2
4 "	14	3.7
5 "	1	.3
6 "	2	.5
Total,	371	100.

A considerable improvement over former conditions has been made of late in the prompt disposition of bail cases, for which the justices of the court are to be commended; but conditions are as yet far from satisfactory, and are probably beyond the power of the court to remedy to any extent under the present system.

II.

THE GOOD IN THE PRESENT SYSTEM WHICH SHOULD BE CONSERVED.

The basic principle of the present system is the rigid requirement that the defendant in every case of misdemeanor shall first have a hearing before a committing magistrate and then, if held, be tried later by an entirely separate court of three judges.

It is commonly accepted that a man ought not to be tried on a charge involving moral turpitude and possible imprisonment for an extended period of time by the action of any one man. In felony cases a trial by jury is required. In misdemeanor cases the defendant has long been given the right to have his fate determined by three judges, or in some parts of the State by a jury of six.

From the point of view of the public there are many misdemeanor cases which should be tried more carefully and thoroughly than is possible in the rush of work of all sorts which crowds the attention of the magistrates, and in a court room and under conditions where it is possible for the district attorney to be adequately represented and conduct the trial, and where the People can have the benefit of the combined judgment of three justices. Prior to 1895, the People were powerless to demand such a trial in cases where the defendant did not ask for it.

The securing to the prosecution of this right to a separate trial by three judges in misdemeanor cases which require it, is the good which is included in the requirement of such a trial in every case of misdemeanor.

This right to demand a trial by more than one man in important or difficult cases is so important, both from the point of view of the accused and of the public, that it should be preserved in those cases, even at such cost of inconvenience to citizens and hardship to poor defendants as cannot be obviated.

III.

SOURCES OF THE EVIL IN THE PRESENT SYSTEM.

Practically all of the evils which have been enumerated flow from a cause which can be simply stated. The right to a trial by three judges and the double procedure involved, which a defendant should have if he wants it and the People should have in cases of public importance, has been made an inflexible requirement in every misdemeanor case, regardless of whether in the particular case it is wanted by the defendant or needed by the public.

Of all the defendants who are held for special sessions nearly one-half plead guilty.

Many of these admit their guilt to the magistrate. In only about 30% of all the cases in special sessions where the defendant pleads guilty or is found guilty is it determined that a prison or reformatory sentence is necessary, and in most of these the sentence required is for a brief term only. It is a fair estimate that two-thirds of the men sent to special sessions for trial would prefer, and justly, to have their cases disposed of by the committing magistrate promptly and without further delay and expense. The trial by three judges to which they should have the right when they want it is forced upon them by mandate of the law when they do not want it and would be better off without it.

An equally large proportion of the cases sent to special sessions are ones in which the public interests require no elaborate trial and would be much better subserved by a prompt disposition. All in which municipal departments are involved fall within this class as do many others, which, because of the facts involved or the nature of the offense, are of very trifling significance.

The trouble is due to the fact that the legislature has attempted to define by a rigid and inapt classification those cases in which the trial should be delayed and formal.

Thus a mandatory stay in jail averaging about four and a half days has been fastened upon prisoners held even for most trifling offenses where both sides would be better served by an immediate disposition and the trial court is congested and its really important

operations retarded by a great mass of petty business which should and otherwise could be disposed of easily and promptly by the magistrate, to the relief of all concerned.

IV.

THE REMEDY.

1.—In general.

The principle of the remedy which should be applied is simple. It is to give to the magistrate power to dispose of the whole matter at once, in the first instance, in all cases where the reason for a formal trial before three judges does not exist. How this will help will be pointed out when the details of its operation have been explained.

2.—Success of this remedy in so far as it has already been applied.

The legislative commission known as the Page Commission which in 1909 studied these courts thoroughly, saw the evil but hesitated to move too rapidly in trying to remedy it; they took the first cautious step by giving to the magistrate the jurisdiction of a court of special sessions in automobile and cruelty to animals cases. This has worked well and met general approbation.

The success of the experiment fully justifies a further advance along this line.

3.—The next step—a municipal or departmental court.

All violations of the sanitary code, labor law and departmental regulations where the prosecution is brought by officers of city or state departments should be tried in one court by a magistrate with plenary jurisdiction.

This is the purpose of the "Municipal Term" provided for in the committee's proposed bill.

It has already been made clear that some such court, with the powers indicated, should be instituted and will prove a great benefit to all concerned. While other changes proposed by the committees have met with some opposition and criticism, this suggestion is welcomed without dissent. It is clearly the next step.

4.—Succeeding steps—the easiest and safest method for taking them as experience may warrant.

There are widely divergent opinions as to how much further the jurisdiction of the magistrates should be extended. Those in whose memories the conditions which prevailed under the old police justices are still fresh and who have not kept abreast of the gradual changes which have made of our present board of magistrates an unusually reliable body of judges, are reluctant to entrust them with power over anything more serious than violations of ordinances. Those, on the other hand, who have followed most closely the work of the magistrate of to-day hold quite the opposite view. They have watched him try charges of prostitution, disorderly conduct and such offenses against public morals as are called "vagrancy" and impose sentences which may last for three years. They see him exert an influence upon the morality of the community, upon the peace and quiet and conception of justice of the masses which no other court can wield. They feel, many of them, that nowadays as between the magistrates' court and special sessions a better quality of justice on the whole is dispensed by the former. They are certain that the magistrates have, as a bench, been far more responsive to the movement of the day towards administrative efficiency and a recognition of the value and requirements of a satisfactory probation system. Today the magistrates are exercising summary jurisdiction in over 100,000 cases a year in Manhattan alone, and are doing it not only without scandal but are doing it with great ability and success. It would seem to have been demonstrated that the public interests are safe in the magistrates' hands and that their powers can with entire safety be materially broadened.

Similarly there are different measures proposed.

A committee of justices of special sessions has drafted proposed legislation which would give the magistrates the jurisdiction of special sessions over cases where the penalty does not exceed a fine of $50 or thirty days' imprisonment. No one has figured out, so far as is known, just what offenses this would cover and a revision of the city's ordinances and sanitary code to meet the requirements of this proposed change is suggested.

Others would give to the magistrate jurisdiction to take pleas of guilty in all misdemeanor cases, requiring all trials to be held before a trial court of three.

Others would, from time to time, pick out certain classes of offenses and ask the legislature to add them to the list of those which the magistrate may try and determine.

The amendment to the law proposed by the justices of special sessions does not go far enough to meet the need. Many of what are in practice the most trifling of offenses are theoretically misdemeanors punishable by the full term of a year in the penitentiary. Offenses against the labor law, for example, which undoubtedly should be taken away from special sessions, would not be affected by this measure. And there is no possibility offered of bringing relief to the man who, in a picayune form, commits a serious sounding offense; the chap, for instance, who, hungry, yields to a sudden temptation to steal a loaf of bread for his starving children, and under the present double procedure has to be kept in jail from three days to a week before he can plead guilty to petit larceny in special sessions. Nor is any provision made for a departmental court, nor for increased administrative efficiency. The authors of this bill evidently do not fully realize the seriousness of the present evils or what is essential to remedy them.

The second suggestion goes too far. It opens the door for a magistrate with a partiality against enforcing the excise, or some other law, to impose his individual view upon the community by taking pleas of guilty and letting the offender go. Again, no adequate protection is offered to the People against hasty sentencing on pleas to minor offenses by very guilty men in courts where the district attorney may not be represented.

The third method, that of legislative additions from time to time to the classes of offense over which the magistrates shall have full power, has certain merits. It permits of going slowly and being guided by experience. It has two faults. The legislators who will have to decide upon proposed extensions of jurisdiction as a rule have no first hand knowledge of conditions, and it will be nobody's business to study how far the system can be safely extended. The second fault is common to all three proposals and the statement of it suggests the proper line of procedure.

All these methods are too formal and rigid. They don't fit the facts. Whether a case is important or trifling really depends upon the circumstances of the particular case. Any attempt to sort them by means of general definitions of crime or gradations of maximum penalty invites serious mistakes and injustice.

What really is needed is a system under which the magistrate may dispose of any misdemeanor case at once when both sides consent.

This is what the committee's proposed method will bring about just so fast as is feasible and safe.

Theoretically, the perfect way would be to have the consent of the district attorney, representing the prosecution, like that of the defendant, be given specifically with regard to the facts of each case. Inasmuch as the district attorney is not now represented in all the magistrates' courts it is provided that he can file a blanket objection to any class of cases before any magistrate. Thus, the district attorney can protect the public interests by objecting generally at the outset and feeling his way cautiously and withdrawing his objection from time to time to various types and classes of cases as experience proves wise; and withdrawing all general objections in any court where he has competent assistants who can be trusted to object or not, as the facts of the particular case may require.

In this way an entirely flexible and thoroughly safeguarded method of filtering out the cases which should be tried by three judges is established. It seems far more satisfactory than any attempt to proceed through inelastic legislative definitions. Indeed, the whole present difficulty has arisen from the failure of the attempt to discriminate through a scheme of general classification. Whatever may have been the situation in the past, we now have and can reasonably expect to have district attorneys who can be trusted to safeguard the public interests. Some difficulty might arise over excise, gambling or disorderly house cases, so they are especially excepted. It is entirely safe to let the official representative of the people watch over the people's

interests, trusting to his discretion to make progress as experience dictates.

5.—How these changes will cure the evil.

It has been shown that, on the average, four and a half days of additional confinement is the necessary result of having prison cases first heard in the magistrates' court and then sent to special sessions, because a defendant is not brought up to plead in special sessions in less than that time. In all cases where plenary jurisdiction is given to the magistrate this mandatory period of confinement and delay will be avoided.

The establishment of a Municipal Term will simplify and expedite the procedure in such cases as come within its purview and secure better results and a great saving in time and convenience to all. By taking away from the court of special sessions these and such other cases as will be disposed of on consent by the magistrates the calendars of that court will be greatly relieved and it can attend to the important cases which will alone engage its attention much more rapidly and thoroughly than at present is possible and with a minimum of delay.

V.

WHY THE APPLICATION OF THE SUGGESTED REMEDIES MAKES ADVISABLE CHANGES IN THE ORGANIZATION OF THE COURTS.

1.—For the year 1914 the cases which were handled in special sessions of the classes that will go to the municipal term when it is established numbered 5,858. 1,475 of these were tried, 3,789 pleaded guilty and 4,775 were found guilty either on pleas or by trial and had to be sentenced by the court.

This means that 35% of the total number of cases which comes before it, that 33% of the sentences which it has to consider and impose, that 42% of the pleas of guilty which it takes and that 16% of the total number of the trials it conducts will be withdrawn from the

court of special sessions by the establishment of the Municipal Term.

The precise amount of time which is taken by the court of special sessions upon these cases is an uncertain matter upon which no exact information exists and the opinions of individuals differ somewhat according to their personal relations to the legislation proposed. If the court now imposes its sentences with any care it is quite obvious that to relieve it of 33% of that work will alone be of considerable effect.

It is further impossible to predict exactly how much relief will be given to the court of special sessions through giving summary jurisdiction to the magistrates in other cases.

Nor is it possible to forecast the amount of relief which will be given to the magistrates in their district court work by taking away from them the cases which will go to the Municipal Term. Something over 30% of the cases disposed of by them during the year 1913 were of this class.

Again it cannot be foreseen, with any accuracy, what amount of business the Municipal Term will have. The removal of the obstacles to the proper enforcement of the law involved in these cases which are occasioned by the inconvenience of the present system may increase the number of prosecutions. On the other hand with better prosecutions may come a diminution of the number. It is even more impossible to tell how many judges will be required for this work or to determine in any more than an experimental fashion how many parts of such court should be instituted.

There is a strong probability that the establishment of a departmental court, upon which all are agreed, will alone so alter the course of business that there will be more justices of the court of special sessions than its work will require, and too few magistrates; although the aggregate number of judges will be more than competent to handle the work.

One thing is certain. The fifty-two judges, now composing the two benches of the court of special sessions and the city magistrates' courts, will have in the aggregate less work to do than they have now, because the duplication of work involved in the double hearing will be abolished in a very large number of cases and the greater effectiveness of a special court for departmental cases will work in the same direction.

To secure the benefit of this saving there must be such interchangeability in the assignment of judges that the work can be equally and efficiently distributed.

2.—Under the present constitution which requires that misdemeanors shall be tried by courts of special sessions, every extension of the jurisdiction of the magistrates involves making them, at least in so far as such cases are concerned, judges of the court of special sessions. The clerks of the magistrates' courts will have to act in such cases as clerks of the court of special sessions. Dockets and records, seals, etc., which will have to be used in connection with cases in which the magistrates exercise such jurisdiction will have to be dockets, records, seals, etc., of the court of special sessions.

If the present structural separation between the court of special sessions and the city magistrates' courts is preserved and any of the remedies which have been suggested is applied (even the one advocated by the judges of special sessions) there will be a resulting confusion in records, etc., which will become more and more inextricable and chaotic the more thoroughly the remedies are applied.

3.—In addition to the above reasons it seems clear from general considerations of administrative efficiency that the two courts which deal with criminal cases of an inferior degree should be merged.

4.—The committee's proposal that all the justices of the court of special sessions be made also city magistrates, and all city magistrates be made also justices of the court of special sessions, all to comprise one board, and that similar steps be taken with regard to clerks and other officials and employees, will obviate the difficulties and will result in the following advantages:

A.—Judges belonging to the one board can be assigned to various departments of work, according to the amount of business in the various courts as it develops. Instead of having one court with too few judges and another with more than it needs, a flexible system is established which will meet and fit as they occur changes in the relative work in the courts

which nobody can accurately forecast. The same is true of the uses of court rooms, assignments of clerks, probation officers and employees.

B.—By having judges assigned to the trial term for periods of a year it will be possible after a time to select for this work from the whole board those judges who are mentally and temperamentally best adapted to it. So with the other special courts. One man may prove an excellent judge for the municipal term, another for a domestic relations court or night court, and neither be so well adapted to the trial term or *vice versa.* Experience is the best guide. In the long run a man's inclinations will lead him to prefer the lines of his greatest ability and there he will be placed without friction. Thus, before long, it can be expected that the judges will be used in the branches of the work for which they are best fitted and a much higher degree of efficiency attained.

C.—Putting all the clerks, officials and records under one administrative system will make unquestionably for simplicity and economy in place of the confusion, duplication and waste which otherwise will result from any further extension of magistrates' powers.

VI.

A SEPARATE CHILDREN'S COURT.

The administrative subjection of the present children's court to the court of special sessions is in many respects working badly. Without going into further detail, it suffices to say that all students of this court feel that in every way it should be removed as far as possible from all connection with the criminal courts.

To comply with requirements of the state constitution it seems necessary to preserve the connection so far as to have justices of the court of special sessions, vested with the jurisdiction of that court, hold the children's court. This has been done in the proposed bill. In all other respects the court will be separate.

The provisions for the children's court have been most

carefully worked out in co-operation with the present justices of Special Sessions assigned to that court, special students of children's courts and representatives of societies interested in children.

VII.

COMMENT ON SOME CRITICISMS WHICH HAVE BEEN MADE OF THE PROPOSED BILL.

It should be distinctly understood that this is not a "ripper" bill. Every person now in office or employment is continued in office or employment, with no cut in his salary, to the end of his term. No power is taken from any one. The present justices of special sessions remain justices of special session.

Entirely incorrect are assertions or innuendoes that this bill represents an effort on the part of the magistrates to increase their powers. The measure was not the idea of any magistrate. It originated entirely with the committee which presents it. It was at first strongly opposed by the magistrates of the second division until what they believed to be administrative defects in its original form were remedied.

As to specific criticisms:

a. That it is unsafe and gives the magistrates too great powers.

Criticisms made on this score ignore the discretion given to the district attorney to object in specific cases and to limit by general objection the classes of cases which the magistrate may try: or else they assume that some day we shall have a corrupt district attorney. This possibility is a poor excuse for perpetuating an existing serious evil: and when the corrupt district attorney does come, the harm he will do by not insisting in certain misdemeanor cases on a trial by three judges will be but a drop in the bucket of our misfortune.

b. That it will permit of "jockeying" cases before friendly magistrates.

Special provisions have been inserted in the bill which will make this practically impossible. The proposed system is as well safeguarded on this point as is the present system.

c. Diversity in sentences.

Only in cases such as gambling, disorderly house and excise, and violations of ordinances and regulations is any theoretical uniformity of sentencing desirable. The first three classes will go to one court, as now. In departmental cases the establishment of a Municipal Term will give much greater uniformity, both in the interpretation of the law and in sentences than now exists.

In other cases the sentence should fit the facts of the particular case. Of course a wide divergence of views will always exist on any particular case. This kind of discrepancy now exists in General Sessions and in the various parts of special sessions and will not be materially increased.

On the whole, careful attention to the particular case is more important than any uniformity which it is possible to attain. An observation of the method of sentencing in a busy part of special sessions to-day will make it clear that in the minor case the average magistrate can give more time and attention to the matter and get the atmosphere better and will certainly make no more mistakes than the present court. In more important cases the relief from pressure of petty detail under the proposed system will materially assist the trial term in giving due attention to the sentence.

d. The powers of the chief magistrate.

These are administrative solely.

There is no patronage involved which the chief magistrate does not have now. With the exception of chief and deputy chief clerks and chief probation officers all of whom he appoints now all the appointments in his power are civil service and none of the judges want to be bothered by them.

It is safe to say that any criticism on this score is based on a misconception either of the present law or the provisions of the proposed bill in the final form in which the committee has presented it.

It is perhaps open to question whether the assignments of justices to the trial term should be made, as is the case now with the night courts, etc., by the Chief Magistrate or by the Mayor. On the whole it seems better to give it to the Chief Magistrate who knows the men better. A change can easily

be made if in practice this creates hard feeling or other unfortunate results.

e. That it abolishes the court of special sessions.

This is not true; except that the change may hurt the dignity of some of the present justices of that court by adding materially to the number of such justices and in diversifying their functions.

It does, from an administrative point of view only, unite the court for trial by three judges with the courts in which the same jurisdiction is to be exercised by one judge only.

f. That it is a reversion to conditions existing prior to 1895.

This statement, whenever made, so completely ignores the provisions of the proposed bill that it merely betrays the prejudice of the man who makes it.

g. That it infringes upon borough autonomy.

The provisions of the bill as originally presented, have been so modified in accordance with the views of the magistrates of the second division that there now seems to be no valid ground for criticism on this score.

Under present conditions there is one court of special sessions for the whole city. The board of magistrates is divided into two divisions—in neither of which is any borough entirely autonomous.

Under the proposed bill there is to be one administrative head for the whole city, just as now in the court of special sessions. Trial terms and other special terms will probably have to have sessions held by the same men in different boroughs whenever the business requires. To secure a flexible and workable system a certain unity throughout the city is necessary. Uniformity in records is also of great importance.

In all other respects every requirement of borough representation, residence and control has been met.

VIII.

CONCLUSION.

The proposed bill is an effort to remedy a very present evil. It preserves all that is good in the existing system. It has been submitted for criticism to magistrates, justices of special sessions and district attorneys. Every criticism and suggestion has been carefully considered and every suggested danger has been guarded against. In operation it will be simple and effective. It will make justice surer and less tardy. It will save many thousand undeserved days in jail to the poor man. It will save duplication of judicial effort, waste of official time and inconvenience to the public. It will give to New York City a model court of inferior criminal jurisdiction.

For these reasons support in securing its enactment is asked of all who read these pages.

SUMMARY OF CHANGES EFFECTED BY THE PROPOSED BILL.

1.—The present inflexible requirement of a double hearing in misdemeanor cases, with the consequent duplication of labor by the courts, delay of justice, inconvenience and waste of time to witnesses and frequent imprisonment for unnecessarily long periods of persons accused of trifling offenses and too poor to get bail, is done away with.

2.—This is accomplished by giving to the City Magistrate before whom the prisoner is first arraigned power to sit as a Judge of Special Sessions and finally dispose of any misdemeanor case, upon the consent of both defendant and the District Attorney, except disorderly house, excise and gambling cases and except in cases involving misconduct towards children. In all of which, and in all cases where such consent is not given, the trial will be by three judges as at present. Thus is established a flexible and carefully safeguarded method of giving to the magistrates in all minor cases the power which they have now for some years been exercising with satisfaction to all parties in automobile and cruelty to animal cases, and which is exercised in all other cities of the State by single magistrates.

3.—The five to six thousand cases of violation of the sanitary code, labor law, and other offenses in which city departments are complainants, all of which now have to be heard first by the magistrate and then in a court of Special Sessions; to the great clogging of business in both courts, annoyance and loss of time to citizens and public officials and hindrance in the enforcement of these laws—are transferred to one court, the Municipal Term, in which the City Magistrate presiding will have all the powers of the Court of Special Sessions to hear and determine.

4.—By the foregoing provisions for the prompt disposition of minor cases in the court before which they are first brought is made possible the establishment, for the trial of important cases where either defendant or District Attorney desires trial by three judges, of a trial term which can hear them undisturbed by the trifling matters to which the law now compels

the Court of Special Sessions to devote a large share of its attention.

5.—The maximum of economy and administrative efficiency in the conduct of the inferior criminal courts is effected by putting them all under the control of one Board of City Magistrates, the judges, clerks and all employees of which can be assigned among the various terms and parts as the actual business of the courts may at any time require, and all of whose activities and records can thus be so co-ordinated and systematized as to work more harmoniously and effectively than is now possible. This should largely reduce, in so far as these courts are concerned, the delays and expense which, to a too great extent, mar our present system of administering justice.

6.—The plan embodied in the bill is to terminate the Court of Special Sessions and City Magistrates Courts as now constituted and have them all conducted by members of one Board of City Magistrates, each of whom will be both a City Magistrate and a Justice of the Court of Special Sessions. The present Justices of the Court of Special Sessions are continued as Justices of the Court of Special Sessions and made also City Magistrates. The present City Magistrates are continued as such and made also Justices of the Court of Special Sessions. Likewise with all clerks and employees. Everyone at present in office or employment is continued to the end of his term.

7.—The Night Courts and Domestic Relations Courts will be conducted as at present. Power is given to the Board of Magistrates to establish new Functional Courts as the need may develop. If, for example, it should seem wise to establish an automobile or speed court or a court for minors, this may be done.

8.—The Children's Court, in accordance with the demands of all those familiar with the requirements of this branch of the work of the courts, is removed further than at present and indeed is separated as far as possible from all connection with the criminal courts, preserving only so much of its character as a branch of the Court of Special Sessions as is necessary under the constitution to give to its Justices valid jurisdiction.

THE COMMITTEE ON CRIMINAL COURTS
of
THE CHARITY ORGANIZATION SOCIETY OF THE CITY OF NEW YORK.

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105 East 22nd Street, New York City.

February 25, 1915.

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